

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 4181

KURTIS QUENTIN MITCHELL

Respondent.

DECISION AND ORDER

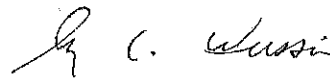
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on December 3, 2012.

It is so ORDERED on November 2, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues Against:

Case No. 4181

12 **KURTIS QUENTIN MITCHELL**

OAH No. 2012041126

13
14 Respondent.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 PARTIES

19 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
20 (Board). She brought this action solely in her official capacity and is represented in this matter by
21 Kamala D. Harris, Attorney General of the State of California, by Antoinette B. Cincotta, Deputy
22 Attorney General.

23 2. Respondent Kurtis Quentin Mitchell (Respondent) is representing himself in this
24 proceeding, and has chosen not to exercise his right to be represented by counsel.

25 3. On or about December 14, 2010, Respondent filed an application dated December 4,
26 2010, with the Board to obtain a Pharmacy Technician Registration.

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5. A copy of Statement of Issues No. 4181 is attached as Exhibit A and incorporated herein by reference.

6. Respondent has carefully read, and understands the charges and allegations in Statement of Issues No. 4181. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

9. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 4181.

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional

1 licensing agency is involved, and shall not be admissible in any other criminal or civil
2 proceeding.

3 CONTINGENCY

4 12. This stipulation shall be subject to approval by the Board. Respondent understands
5 and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
6 communicate directly with the Board regarding this stipulation and settlement, without notice to
7 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
8 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the
9 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
10 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
11 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall
12 not be disqualified from further action by having considered this matter.

13 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
14 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
15 effect as the originals.

16 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
17 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
18 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
19 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
20 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
21 writing executed by an authorized representative of each of the parties.

22 15. In consideration of the foregoing admissions and stipulations, the parties agree that
23 the Board may, without further notice or formal proceeding, issue and enter the following
24 Disciplinary Order:

25 DISCIPLINARY ORDER

26 IT IS HEREBY ORDERED that upon satisfaction of all statutory and regulatory
27 requirements for issuance of a license, a Pharmacy Technician Registration shall be issued to

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Respondent and immediately revoked; the order of revocation is stayed, and Respondent is placed on probation for five (5) years upon the following terms and conditions:

1. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until he is certified as defined by Business and Professions Code section 4202(a)(4), and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, Respondent shall not enter any pharmacy area or any portion of any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, Respondent may continue to own or hold an interest in any licensed premises by the Board in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- ☐ an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws

- 1 ☐ a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
2 criminal complaint, information or indictment
- 3 ☐ a conviction of any crime
- 4 ☐ discipline, citation, or other administrative action filed by any state or federal agency
5 which involves Respondent's Pharmacy Technician Registration or which is related
6 to the practice of pharmacy or the manufacturing, obtaining, handling, distributing,
7 billing, or charging for any drug, device or controlled substance.

8 Failure to timely report any such occurrence shall be considered a violation of probation.

9 **3. Report to the Board**

10 Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its
11 designee. The report shall be made either in person or in writing, as directed. Among other
12 requirements, Respondent shall state in each report under penalty of perjury whether there has
13 been compliance with all the terms and conditions of probation. Failure to submit timely reports
14 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
15 in submission of reports as directed may be added to the total period of probation. Moreover, if
16 the final probation report is not made as directed, probation shall be automatically extended until
17 such time as the final report is made and accepted by the Board.

18 **4. Interview with the Board**

19 Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews
20 with the Board or its designee, at such intervals and locations as are determined by the Board or
21 its designee. Failure to appear for any scheduled interview without prior notification to Board
22 staff, or failure to appear at two (2) or more scheduled interviews with the Board or its designee
23 during the period of probation, shall be considered a violation of probation.

24 **5. Cooperate with Board Staff**

25 Respondent shall cooperate with the Board's inspection program and with the Board's
26 monitoring and investigation of Respondent's compliance with the terms and conditions of his
27 probation. Failure to cooperate shall be considered a violation of probation.

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1 **6. Notice to Employers**

2 During the period of probation, Respondent shall notify all present and prospective
3 employers of the decision in case number 4181 and the terms, conditions and restrictions imposed
4 on Respondent by the decision, as follows:

5 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
6 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,
7 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
8 tenure of employment) and owner to report to the Board in writing acknowledging that the listed
9 individual(s) has/have read the decision in case number 4181 and the terms and conditions
10 imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
11 supervisor(s) submit timely acknowledgement(s) to the Board.

12 If Respondent works for or is employed by or through a pharmacy employment service,
13 Respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy
14 of the terms and conditions of the decision in case number 4181 in advance of the Respondent
15 commencing work at each pharmacy. A record of this notification must be provided to the Board
16 upon request.

17 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
18 (15) days of Respondent undertaking any new employment by or through a pharmacy
19 employment service, Respondent shall cause his direct supervisor with the pharmacy employment
20 service to report to the Board in writing acknowledging that he has read the decision in case
21 number 4181 and the terms and conditions imposed thereby. It shall be Respondent's
22 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
23 acknowledgment(s) to the Board.

24 Failure to timely notify present or prospective employer(s) or to cause that/those
25 employer(s) to submit timely acknowledgements to the Board shall be considered a violation of
26 probation.

27 "Employment" within the meaning of this provision shall include any full-time,
28 part-time, temporary or relief service or pharmacy management service as a pharmacy

1 technician or in any position for which a pharmacy technician license is a requirement
2 or criterion for employment, whether the Respondent is considered an employee,
3 independent contractor or volunteer.

4 **7. Probation Monitoring Costs**

5 Respondent shall pay any costs associated with probation monitoring as determined by the
6 Board each and every year of probation. Such costs shall be payable to the Board on a schedule
7 as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed
8 shall be considered a violation of probation.

9 **8. Status of License**

10 Respondent shall, at all times while on probation, maintain an active, current pharmacy
11 technician license with the Board, including any period during which suspension or probation is
12 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

13 If Respondent's pharmacy technician license expires or is cancelled by operation of law or
14 otherwise at any time during the period of probation, including any extensions thereof due to
15 tolling or otherwise, upon renewal or reapplication Respondent's license shall be subject to all
16 terms and conditions of this probation not previously satisfied.

17 **9. License Surrender While on Probation/Suspension**

18 Following the effective date of this decision, should Respondent cease work due to
19 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
20 Respondent may tender his pharmacy technician license to the Board for surrender. The Board or
21 its designee shall have the discretion whether to grant the request for surrender or take any other
22 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
23 license, Respondent will no longer be subject to the terms and conditions of probation. This
24 surrender constitutes a record of discipline and shall become a part of the Respondent's license
25 history with the Board.

26 Upon acceptance of the surrender, Respondent shall relinquish his pharmacy technician
27 license to the Board within ten (10) days of notification by the Board that the surrender is
28 accepted. Respondent may not reapply for any license, permit, or registration from the Board for

1 three (3) years from the effective date of the surrender. Respondent shall meet all requirements
2 applicable to the license sought as of the date the application for that license is submitted to the
3 Board.

4 **10. Notification of a Change in Name, Residence Address, Mailing Address or**
5 **Employment**

6 Respondent shall notify the Board in writing within ten (10) days of any change of
7 employment. Said notification shall include the reasons for leaving, the address of the new
8 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
9 shall further notify the Board in writing within ten (10) days of a change in name, residence
10 address and mailing address, or phone number.

11 Failure to timely notify the Board of any change in employer(s), name(s), address(es), or
12 phone number(s) shall be considered a violation of probation.

13 **11. Violation of Probation**

14 If a Respondent has not complied with any term or condition of probation, the Board shall
15 have continuing jurisdiction over Respondent, and probation shall automatically be extended,
16 until all terms and conditions have been satisfied or the Board has taken other action as deemed
17 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
18 to impose the penalty that was stayed.

19 If Respondent violates probation in any respect, the Board, after giving Respondent notice
20 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
21 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
22 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
23 a petition to revoke probation or an accusation is filed against Respondent during probation, the
24 Board shall have continuing jurisdiction, and the period of probation shall be automatically
25 extended until the petition to revoke probation or accusation is heard and decided.

26 **12. Completion of Probation**

27 Upon written notice by the Board indicating successful completion of probation,
28 Respondent's pharmacy technician license will be fully restored.

1 **13. No Ownership of Licensed Premises**

2 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
3 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
4 partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell
5 or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90)
6 days following the effective date of this decision and shall immediately thereafter provide written
7 proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide
8 documentation thereof shall be considered a violation of probation.

9 **14. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

10 Within thirty (30) days of the effective date of this decision, Respondent shall begin regular
11 attendance at a recognized and established substance abuse recovery support group in California,
12 (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board
13 or its designee. Respondent must attend at least one group meeting per week unless otherwise
14 directed by the Board or its designee. Respondent shall continue regular attendance and submit
15 signed and dated documentation confirming attendance with each quarterly report for the duration
16 of probation. Failure to attend or submit documentation thereof shall be considered a violation of
17 probation.

18 **15. Random Drug Screening**

19 Respondent, at his own expense, shall participate in random testing, including but not
20 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
21 screening program as directed by the Board or its designee. Respondent may be required to
22 participate in testing for the entire probation period and the frequency of testing will be
23 determined by the Board or its designee. At all times Respondent shall fully cooperate with the
24 Board or its designee, and shall, when directed, submit to such tests and samples for the detection
25 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or
26 its designee may direct. Failure to timely submit to testing as directed shall be considered a
27 violation of probation. Upon request of the Board or its designee, Respondent shall provide
28 documentation from a licensed practitioner that the prescription for a detected drug was

1 legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely
2 provide such documentation shall be considered a violation of probation. Any confirmed positive
3 test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a
4 documented medical treatment shall be considered a violation of probation and shall result in the
5 automatic suspension of work by Respondent. Respondent may not resume work as a pharmacy
6 technician until notified by the Board in writing.

7 During suspension, Respondent shall not enter any pharmacy area or any portion of or any
8 other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other
9 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and
10 devices or controlled substances are maintained. Respondent shall not do any act involving drug
11 selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent
12 manage, administer, or assist any licensee of the Board. Respondent shall not have access to or
13 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
14 substances. Respondent shall not resume work until notified by the Board.

15 Failure to comply with this suspension shall be considered a violation of probation.

16 **16. Notification of Departure**

17 Prior to leaving the probationary geographic area designated by the Board or its designee
18 for a period greater than twenty-four (24) hours, Respondent shall notify the Board verbally and
19 in writing of the dates of departure and return. Failure to comply with this provision shall be
20 considered a violation of probation.

21 **17. Abstain from Drugs and Alcohol Use**

22 Respondent shall completely abstain from the possession or use of alcohol, controlled
23 substances, dangerous drugs and their associated paraphernalia except when the drugs are
24 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
25 request of the Board or its designee, Respondent shall provide documentation from the licensed
26 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
27 treatment of the Respondent. Failure to timely provide such documentation shall be considered a
28 violation of probation. Respondent shall ensure that he is not in the same physical location as

1 individuals who are using illicit substances even if Respondent is not personally ingesting the
2 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
3 not supported by the documentation timely provided, and/or any physical proximity to persons
4 using illicit substances, shall be considered a violation of probation.

5 **18. Prescription Coordination and Monitoring of Prescription Use**

6 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the
7 Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
8 physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the
9 Respondent's history with the use of alcohol, and who will coordinate and monitor any
10 prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs.
11 The approved practitioner shall be provided with a copy of the Board's Statement of Issues and
12 Decision. A record of this notification must be provided to the Board upon request. Respondent
13 shall sign a release authorizing the practitioner to communicate with the Board about
14 Respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or
15 psychiatrist shall report to the Board on a quarterly basis for the duration of probation regarding
16 Respondent's compliance with this condition. If any substances considered addictive have been
17 prescribed, the report shall identify a program for the time limited use of any such substances.
18 The Board may require that the single coordinating physician, nurse practitioner, physician
19 assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive
20 medicine. Should Respondent, for any reason, cease supervision by the approved practitioner,
21 Respondent shall notify the Board immediately and, within thirty (30) days of ceasing treatment,
22 submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist
23 of Respondent's choice to the Board or its designee for its prior approval. Failure to timely
24 submit the selected practitioner or replacement practitioner to the Board for approval, or to ensure
25 the required reporting thereby on the quarterly reports, shall be considered a violation of
26 probation.

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1 If at any time an approved practitioner determines that Respondent is unable to practice
2 safely or independently as a pharmacy technician, the practitioner shall notify the Board
3 immediately by telephone and follow up by written letter within three (3) working days. Upon
4 notification from the Board or its designee of this determination, Respondent shall be
5 automatically suspended and shall not resume practice until notified by the Board that practice
6 may be resumed.

7 During suspension, Respondent shall not enter any pharmacy area or any portion of the
8 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
9 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices
10 or controlled substances are maintained. Respondent shall not practice as a pharmacy technician
11 nor do any act involving drug selection, selection of stock, manufacturing, compounding,
12 dispensing or patient consultation; nor shall Respondent manage, administer, or be a consultant to
13 any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing
14 of dangerous drugs and controlled substances. Respondent shall not resume practice until
15 notified by the Board.

16 During suspension, Respondent shall not engage in any activity that requires the
17 professional judgment of a pharmacy technician. Respondent shall not direct or control any
18 aspect of the practice of a pharmacy technician. Respondent shall not perform the duties of a
19 pharmacy technician for any entity licensed by the Board.

20 ACCEPTANCE

21 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
22 stipulation and the effect it will have on my pharmacy technician registration. I enter into this
23 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
24 to be bound by the Decision and Order of the Board of Pharmacy.

25 DATED: 6/19/12


26 KERTIS QUENTIN MITCHELL
27 Respondent
28

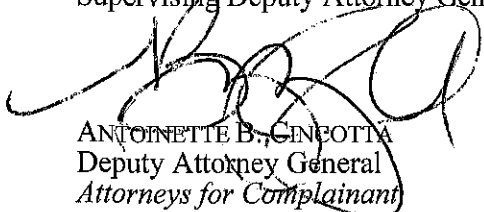
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA SCHNEIDER
Supervising Deputy Attorney General


ANTONETTE B. CINCOTTA
Deputy Attorney General
Attorneys for Complainant

SD2011801259
Stipulation.rtf

Exhibit A

Statement of Issues No. 4181

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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues Against:

Case No. 4181

12 **KURTIS QUENTIN MITCHELL**
13 **59 Rue Chateau**
14 **Aliso Viejo, CA 92656**

STATEMENT OF ISSUES

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about December 14, 2010, the Board of Pharmacy, Department of Consumer
21 Affairs received an application for a Pharmacy Technician Registration from Kurtis Quentin
22 Mitchell (Respondent). On or about December 4, 2010, Kurtis Quentin Mitchell certified under
23 penalty of perjury to the truthfulness of all statements, answers, and representations in the
24 application. The Board denied the application on August 5, 2011.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300, subdivision (c) of the Code states "The board may refuse a license to any applicant guilty of unprofessional conduct."

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

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1 7. Section 482 of the Code states:

2 Each board under the provisions of this code shall develop criteria to evaluate
3 the rehabilitation of a person when:

4 (a) Considering the denial of a license by the board under Section 480; or

5 (b) Considering suspension or revocation of a license under Section 490.

6 Each board shall take into account all competent evidence of rehabilitation
7 furnished by the applicant or licensee.

8 8. Section 493 of the Code states:

9 Notwithstanding any other provision of law, in a proceeding conducted by a
10 board within the department pursuant to law to deny an application for a license or to
11 suspend or revoke a license or otherwise take disciplinary action against a person who
12 holds a license, upon the ground that the applicant or the licensee has been convicted
13 of a crime substantially related to the qualifications, functions, and duties of the
14 licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

15 As used in this section, "license" includes "certificate," "permit," "authority,"
16 and "registration."

17 9. Section 4022 of the Code states:

18 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
19 self-use, except veterinary drugs that are labeled as such, and includes the following:

20 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
without prescription," "Rx only," or words of similar import.

21 (b) Any device that bears the statement: "Caution: federal law restricts this
22 device to sale by or on the order of a _____," "Rx only," or words of similar
23 import, the blank to be filled in with the designation of the practitioner licensed to use
or order use of the device.

24 (c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

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10. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1769 states:

(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

12. California Code of Regulations, title 16, section 1770 states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

DRUGS

13. "Oxycontin" is a brand name for oxycodone, a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M), and a dangerous drug pursuant to Business and Professions Code section 4022.

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1 asked Respondent how many pills he possessed, and he stated, "One." When officers searched
2 Respondent's person, they located in Respondent's front left pocket a small plastic medication
3 bottle with the label ripped off. Inside the bottle officers located a round green pill, later
4 identified as an 80mg. tablet of Oxycontin, a schedule II narcotic analgesic. A search of
5 Respondent's vehicle revealed a multicolored glass pipe, commonly used for smoking marijuana,
6 with burnt marijuana residue inside the bowl end.

7 19. Officers asked Respondent where he purchased the Oxycontin pill and he told officers
8 that he purchased the Oxycontin pill for \$50 from a friend named "Cameron" who lives in Aliso
9 Viejo. Respondent told officers he had used Oxycontin several times in the past and that it was
10 the most powerful medication he had ever taken. Respondent stated, "It is like Vicodin, but ten
11 times stronger." Respondent told officers that he was aware that the mere possession of
12 Oxycontin without a prescription was a criminal violation. Respondent was placed under arrest
13 for violating Health and Safety Code section 11350(a) (possession of a controlled substance).
14 Respondent's vehicle was towed from the scene.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 **(Act Involving Dishonesty, Fraud, or Deceit)**

17 20. Respondent's application is subject to denial under sections 480, subdivision (a)(2)
18 and (c) and 4301(f) and (g), of the Code in that he committed an act of dishonesty, fraud and/or
19 deceit when, in response to the question on his application for registration as a pharmacy
20 technician, "Have you ever been convicted of or pled no contest to a violation of any law of a
21 foreign country, the United States or any state laws or local ordinances? You must include all
22 misdemeanor and felony convictions, regardless of the age of the conviction, including those
23 which have been set aside under Penal Code section 1203.4. Traffic violations of \$500 or less
24 need not be reported. If "yes," attach an explanation including the type of violation, the date,
25 circumstances, location and the complete penalty received. In addition to this written
26 explanation, please provide the Board of Pharmacy with certified copies of all pertinent court
27 documents or arrest reports relating to this conviction." Respondent responded, "No," and failed
28

1 to disclosed the conviction for possession of marijuana, detailed at paragraph 15, above, which is
2 incorporated here by reference.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

4 **(Commission of Acts Which if Done by a Licensee Would be**
5 **Grounds for Suspension or Revocation of License)**

6 21. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
7 of the Code in that he committed acts, that if done by a licensed pharmacy technician, would be
8 grounds for suspension or revocation of the license. The circumstances are as follows:

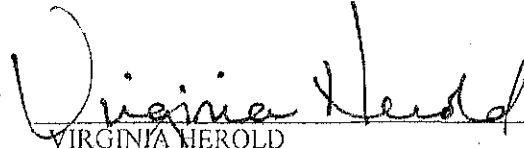
9 22. On or about October 26, 2008, as detailed in paragraphs 14 through 19, above,
10 Respondent was convicted of crimes substantially related to the qualifications, functions, and
11 duties of a licensed pharmacy technician, which would be grounds for discipline under section
12 4301, subdivision (l) of the Code.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board of Pharmacy issue a decision:

- 16 1. Denying the application of Kurtis Quentin Mitchell for a Pharmacy Technician
17 Registration;
18 2. Taking such other and further action as deemed necessary and proper.

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20
21 DATED: 3/1/12


22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant
28

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